IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(*Special Original Jurisdiction*)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO.13830 of 2005

Between :

E.Prabhakar Rao, S/o.Peter,
R/o.Cherukumilli Village, Akuvidu Mandal,

West Godavari District.

..... PETITIONER

A N D

1 Mandal Revenue Officer, Akuvidu Mandal, West Godavari

District.
2 Panchayat Secretary, Charukumilli Gram Panchayat,

Akuveedu Mandal, West Godavari District.
3 Secretary , Agricultural Market Committee, Akuveedu Agricultural

Marketing Yard, Akuveedu Mandal, W.G.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in proposing to lay-out a road through petitioner's land without issuing any notice to the petitioner of his land and extent of land admeasuring Acs.1.03 in Sy.No.331, and 338 situated at Cherukimalli Village, Akuveedhu Mandal, West Godavari District as being illegal, arbitrary, and unconstitutional a part from being Violative of Principles of Natural Justice and violative of Article 300-A of the Constitution of India and consequently direct the respondents to act in accordance with law and drop all further proceedings as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.CH.DHANAMJAYA

Counsel for the Respondent No.1: GOVT.PLEADER FOR REVENUE

Counsel for the Respondent No.2: MR.M.PRABHAKAR RAO

Counsel for the Respondent No.3: MR.MADHAVA REDDY

The Court made the following at the admission stage : (order follows 2nd page)

O R D E R :

This writ petition is filed seeking to declare the action of the respondents in proposing to layout a road through his land without issuing any notice to the petitioner of his land to an extent of Acs:1-03 in sy.nos. 331 and 338 situate at Cherukimalli village of Akuveedu Revenue Mandal in West Godavari district, as illegal, arbitrary, unconstitutional and violative of Article 300-A of the Constitution of India and consequently direct the respondents to act in accordance with law and drop all further proceedings as this court may deem fit and proper in the circumstances of the case.

The case of the petitioner is that he is an Ex-Serviceman and a landless poor. He belongs to Cherukumalli village of Akuveedu Revenue Mandal in West Godavari district. His paternal uncle, Mr.Solaman was granted in an extent of 0-36 and 0-37 cents in sy.nos. 313 and 338 of Cherukumalli village, Akuveedu Mandal, West Godavari district, through Proceedings ROC.No.1651/82 (e) dated 10-9-1982 under Ex-Serviceman quota.

The petitioner submits that after the demise of his uncle, Mr.Solman, he inherited the said property, as his uncle had no issues. After the demise of his uncle, he got into possession of the said land. There is no claim over the said land from any quarter. Apart from 1.03 cents, he is in possession and enjoyment over the Government Poramboke land adjacent to his land. There is no objection, as he is in possession of Ac:1-30 cents for the last over 35 years. The Revenue officials after recognizing his ownership over the schedule property, collecting taxes. After the death of his uncle, his name was mutated in the revenue records and thereby he established his title and interest over the said property.

While things stood thus, the learned counsel for the petitioner submits that the second respondent, at the behest of the people belonging to wealthy family got issued a notice on 27-5-2005 asking him to vacate the said land without issuing any show cause notice to him. Pursuant to the show cause notice, he had submitted his detailed explanation on 30-5-2005 stating that prior to the notice on 27-5-2005, he is in peaceful possession and enjoyment over the said land and the Government is also collecting taxes by recognizing his possession over the said property. Now contrary to his expectations, the officials of the respondents came to his land on 23-6-2005 and forced to take measurements of the said land. The petitioner objected for the same and under what authority the respondents can take measurements without issuing any show cause notice nor proceedings. Further, the officials of the respondents are trying to lay road within three days with the aid and assistance of posse of armed guards in order to evict him from the petition schedule property in a high handed manner. Therefore, sought the relief of mandamus to declare the action

of the second respondent in taking possession of his land would be dropped out in view of his detailed explanation.

When the matter came up for admission, both the counsel conceded at the bar that the facts in this writ petition are similar and identical to the facts in WP.No.20778 of 1997, which was disposed of by a Division Bench of this court on 03-02-1998, and requested to dispose of this writ petition also in terms of the judgment in the said writ petition.

I have perused the said judgment of the Division Bench of this court, wherein it was observed as follows :

> *"Though this writ petition and many other writ petitions are premature, as they have been filed in the absence of any specific orders of eviction or dispossession or demolition, in order to see that the interest of both the parties is safe guarded, we do not like to dismiss the writ petition and we dispose of the writ petition directing the authorities to take appropriate action complying with the observations to be made by us in this regard.*
>
> *When a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands, jump into the premises, and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities shall pass orders to determine the damages. It is very clear that barring a few cases, in most of the cases, which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition, as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The*

complaint of the occupants though looks misconceived, but after hearing the arguments, we found that there was an attempt by the Government either to widen the roads or clear the encroachments. But, in our view, before doing that, the authorities have to follow certain principles of natural justice. Hence, the writ petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the following requirements

If the authorities viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupants calling upon them to show cause as too why the proposed action shall not be taken. On receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized occupation and shall determine whether the property in question belongs to the Government or any other local self-government authority or to the occupants. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forthwith. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupants are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this order calling upon the occupants to show cause as to why the action proposed shall not be taken by giving 60 days to file the objections, if any. The person interested viz., the occupants shall submit their objections or explanation within the time stipulated together with any other documents they would like to rely upon in support of their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupants shall produce all the evidence, which they want to rely upon before the Mandal Revenue Officer on the appointed day.

If there is any claim for grant or assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupants. In cases of demolition, the loss caused shall have to be assessed by the Engineer of the area concerned, who, before

assessing, shall visit the premises along with the officer concerned and the occupants or the persons interest on the date notified by the concerned officer. The occupants shall appear before the concerned authority on all the dates in order to complete the enquiry at an early date. Till the conclusion of the enquiry by the Mandal Revenue Officer, statusquo obtaining as on today shall continue."

The respondents are directed to issue notice to the petitioners before initiating any action of taking possession of Ac:0-43 cents of land situate in RS.No.727/1, Penumantra village of Penumantra Revenue Mandal, East Godavari district and follow due process of law in terms of the judgment of the Division Bench of this Court in WP.No.20778 of 1997, dated 03-2-1998.

Accordingly, at the admission stage, the writ petition is disposed of in terms of the said judgment of the Division Bench of this Court in WP.No. 20778 of 1997 dated 03-02-1998. The respondents are directed to follow the guidelines issued in the aforesaid judgment. However, there shall be no order as to costs.

JUNE 28th, 2005. ----------

I S L. ELIPE DHARMA RAO, J

To

1) The Mandal Revenue Officer, Akuvidu Mandal, West Godavari District.
2) The Panchayat Secretary, Charukumilli Gram Panchayat, Akuveedu Mandal, West Godavari District.
3) The Secretary , Agricultural Market Committee, Akuveedu Agricultural Marketing Yard, Akuveedu Mandal, W.G.District

4) 2 CD copies

5) 1 CC to MR.DHANAMJAYA

6) 1 CC to MR.PRABHAKARA RAO.

7) The Govt.Pleader for Revenue, High Court buildings, High Court of

A.P. Hyderabad.